

CONTRACT FOR Fire Based Inspections, Reporting, and Asset Management Software

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham (“City”) and Fire Recovery USA, LLC), a limited liability company organized and existing under the laws of California.

Sec. 1. Background and Purpose. The overall objectives of this plan are to automate the processes of the Fire Prevention Division and bring the entire fire department under one records and asset management system for efficiency and ease of use.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall:

- (a) Fire Recovery USA will provide:
 - i. Billing and cost recovery component
 - ii. Hardware/equipment

Fire Recovery USA is a partner of FIREHOUSE Software© and will subcontract a portion of this proposal’s scope of work to FIREHOUSE Software©.
- (b) FIREHOUSE Software© will provide:
 - i. Overall System:
 - ii. System Security Requirements:
 - iii. Fire Incident Reporting:
 - iv. EMS Incident Reporting:
 - v. Department Log / Journal/Daily Reminders
 - vi. Hydrant
 - vii. Occupancy / Preplans / Inspections
 - viii. Apparatus / Equipment (Inventory)
 - ix. Staff / Training / Activities
 - x. · Staff Scheduling
 - xi. · Inspection Software For iPad
 - xii. · Data Analysis Capabilities
 - xiii. Training/Support To Be Provided
 - xiv. Conversion Of Data
- (c) FIREHOUSE Software© will provide all of the necessary personnel, materials, software, and related materials needed to successfully implement the FIREHOUSE Software© products and services as described in the “40. Scope of Work” section of the RFP (pages 4-8).
- (d) Fire Recovery USA will provide the “Cost Recovery” services and the “Equipment To Be Provided” as described in the “40. Scope of Work” section of the RFP (page 8).
- (e) Training
 - i. Training covers the capabilities and responsibilities of the setup team(s) and system administrators. The initial kickoff will ensure administrators have the ‘vision/outlook’ needed to begin building an internal implementation plan as well as the tools needed to complete the setup phase of the project.
 - ii. The training will focus on the user aspect with some emphasis on the
 - iii. ‘vision/direction/purpose’ of the software. Towards the end of this week-long training we
 - iv. will finalize the admin training and (re)evaluate (and/or make any recommendations to)
 - v. the setup to date. In this training special attention will be given to the ‘big picture’,
 - vi. familiarization and detailing the software from the user standpoint, power features for
 - vii. end users, tips & tricks, and much more.
 - viii. The final day of training may be used in any capacity the city finds most appropriate.
 - ix. This may include additional admin training, or follow-up trainer/user training, From the
 - x. initial kickoff through the life of the software, technical support is available at every step.
 - xi. Technical assistance may be provided by phone, email, fax, or web-conferencing.
- (f) Technical Support - FIREHOUSE Software© Support
 - i. Unlimited telephone support on a toll free (800 number) for the FIREHOUSE Software© products and services with direct connect to FH technical support, Monday through Friday from 8:00 AM to 8:00 PM and Saturday from 9:00 AM to 1:00 PM (EDT). Tech support responds from a message queue with replies
 - ii. generally within 30-60 minutes.

- iii. An account history database with specific system configurations and a written account of all problems encountered.
 - iv. Unlimited access to the 24-hour fax line. Faxed in problems are answered before 9:00 AM Eastern standard time.
 - v. Unlimited access to the FIREHOUSE Software© FTP site on the Internet for file upload and download, containing tips techniques, fire service industry news and other electronic communication.
 - vi. All program updates and releases, including new features to existing system, additional reports and product enhancements.
- (g) Technical Support Fire Recovery USA Cost Recovery Support
- i. Unlimited email, webinar, and telephone support on a toll free (800 number) for the Cost Recovery portion of the RFP will be provided by Fire Recovery USA, Monday through Friday from 10:00 AM to 9:00 PM (EDT).
 - ii. INSPECTIONS AND COST RECOVERY – FIRE RECOVERY USA
 - iii. Once the inspection is complete, the inspector simply touches “Submit” on the iPad and the data is sent to Fire Recovery USA.
 - iv. If the business passed, then we send an electronic bill to the business. The business can pay by check or online. Once paid, they are provided with an instant Fire Inspection Permit via email that they can print and post. The iPad is automatically updated and the location is set for a new inspection in 12 months.
 - v. If the business failed, we alert the responsible party to the failed item(s) that need repair and the iPad automatically reschedules a follow-up inspection for a future date.
 - vi. The status of each inspection (Current or Archived) is available 24/7, online, on RecoveryHubsm. This will both provide immediate account information, but also allow you to forecast incoming funds and plan for their use.

In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The City shall pay the Contractor for the Work as follows. The Contractor is acting as the billing and collection agent for the City and shall remit, on a monthly basis, payments net of collection fees on all inspections submitted to the contractor. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Durham Fire Department 2-Year Inspection Revenue Basis for bid compensation of 7/25/12

(a) Variables

- i. Average Inspection Fee \$106.00
- ii. Estimated Number of Annual Inspections 6,800
- iii. Estimated Collection Percentage 95%
- iv. Estimated Number of iPads 12

(b) Equipment Cost To The Fire Department

Year 1	Units	Each	Subtotal
Apple iPad	12	\$629	\$7,548
2-yr Apple Warranty	12	\$80	\$960
Otterbox Case	12	\$80	\$960
Application Cost (inc. in Enterprise Pkg.)	0	\$500	\$0
AT&T Service @ \$25/month	12	\$300	\$3,600
FH Software/Enterprise Link Installation	1	\$86,730	\$86,730
iPad Deployment & Setup Costs	12	\$96	\$1,152
iPad Maintenance Costs	12	\$108	\$1,296
Data Migration/Conversion *	1	\$10,000	\$10,000
Training - FIREHOUSE products	1	\$7,975	\$7,975

Training - iPad billing and tracking	1	\$3,000	<u>\$3,000</u>
Subtotal Of Above			\$123,221

** Data Migration/Conversion cost is an estimate until actual data is reviewable.*

<u>Equipment Cost 2nd Year</u>	<u>Units</u>	<u>Each</u>	<u>Subtotal</u>
FH Maintenance/application/analytic	1	\$13,875	\$13,875
AT&T Service @ \$25/month	12	\$300	\$3,600
iPad Service Costs	12	\$96	\$1,152
iPad Maintenance Costs	12	\$108	<u>\$1,296</u>
Total Year 2 Equipment Costs			\$19,923

Revenue To Fire Department	
Gross Inspection Revenue - Year 1	\$684,760
<i>Minus Year 1 Collection Fee</i>	<u>\$119,510</u>
Gross Income - Year 1	\$565,250
<i>Minus Year 1 Equipment Costs</i>	<u>\$123,221</u>
Net Income Year 1	\$442,029

Gross Inspection Revenue - Year 2	\$684,760
<i>Minus Year 2 Collection Fee</i>	<u>\$119,510</u>
Gross Income - Year 2	\$565,250
<i>Minus Year 2 Equipment Costs</i>	<u>\$19,923</u>
Net Income Year 2	\$545,327

Total 2-Year Net Income	\$987,356
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The information below defines the data and figures shown in the 2-Year Inspection Revenue Forecast above

(c) Variables

- i. Average Inspection Fee – This \$106 is the average inspection fee billed.
- ii. Estimated Number of Annual Inspections – 6,800 is the minimum number of annual
- iii. inspections.
- iv. Estimated Collection Percentage – This is the estimated overall collection rate.
- v. Estimated Number of iPads – This is how many iPads are included in this proposal,
- vi. twelve (12).

(d) Equipment & Service Cost Funded To The Fire Department

- i. Year 1 – This is the hard cost of the equipment and services (hardware, software, accessories, warranties, applications, etc.) provided to the City of Durham in Year 1. This will be paid back to Fire Recovery USA through a portion of the inspection fees collected.
- ii. Year 2 - This is the hard cost of the services (software, warranties, applications, etc.) provided to the City of Durham in Year 2. This will be paid back to Fire Recovery USA through a portion of the inspection fees collected.

(e) Revenue To Fire Department

- i. Gross Inspection Revenue - Year 1 – This is the total gross revenue collected by the inspection program in Year 1.
- ii. Minus Year 1 Collection Fee – This is the collection fees deducted by Fire Recovery USA for the cost of the collections.
- iii. Gross Income - Year 1 - This is the gross income collected by the inspection program in Year 1.
- iv. Minus Year 1 Equipment & Service Payoff – This is the portion of the fees deducted by Fire Recovery USA to pay back the costs listed of the Equipment & Services provided in the section above.
- v. Net Income Year 1 – This is the NET income to the City of Durham after collection fees and equipment & service payback deductions.
- vi. Gross Inspection Revenue - Year 2 – This is the total gross revenue collected by the inspection program in Year 2.
- vii. Minus Year 2 Collection Fee – This is the collection fees deducted by Fire Recovery USA for the cost of the collections.
- viii. Gross Income - Year 2 - This is the gross income collected by the inspection program in Year 2.

- ix. Minus Year 2 Equipment & Service Payoff – This is the portion of the fees deducted by Fire Recovery USA to pay back the costs listed of the Equipment & Services provided in the section above.
- x. Net Income Year 2 – This is the NET income to the City of Durham after collection fees and equipment & service payback deductions.
- (f) Total 2-Year Net Income – This is the total 2-Year NET income from the program.
- (g) Equipment Breakdown - Year 1
 - i. Apple iPad – This is the number of iPads provided and the cost-per-unit funded in the proposal, twelve (12).
 - ii. 2-yr Apple Warranty – This is the number of iPads warranties provided and the costper-unit funded in the proposal, twelve (12).
 - iii. Otterbox Case – This is the number of Otterbox (or compatible) hard-cases provided and the cost-per-unit funded in the proposal, twelve (12).
 - iv. Application Cost (inc. in Enterprise Pkg.) – This is the amount of FHinspector iPad Applications provided and the cost-per-unit funded in the proposal. This is shown as zero (0) because they are included in the “FH Software/Enterprise Link Installation”package, as listed below.
 - v. AT&T Service @ \$25/month – This is the number of (AT&T or Verizon) service plans provided and the cost-per-unit funded in the proposal, twelve (12).
 - vi. FH Software/Enterprise Link Installation – This is the costs of the equipment and services provided by FIREHOUSE Software© in the proposal. Here is a detailed list:
 - a. FH Web Bundled System
 - b. Fire and EMS Reporting, Staff Activities and Training, Occupancy Management Apparatus Equipment and Inventory, Hydrant Tracking
 - c. FH Web Additional Licenses
 - d. FH Web Staff Scheduling Module
 - e. FH Web CAD Monitor Interface
 - f. FH Inspector for iPad, twelve (12).
 - g. FH Web Complete System Support
 - h. FH Web Additional User Support
 - i. FH Web Staff Scheduling Module Support FH Web CAD Monitor Support
 - j. FH Analytics - 2 User
 - k. FH Analytics Support - 2 User
 - vii. iPad Deployment & Setup Costs – This is the costs to setup each iPad. It includes loading and testing of software, setup of cellular service, software updates, installation of the Otterbox cases, etc.
 - viii. iPad Maintenance Costs – This is annual costs to maintain the billing and data system and syncing to each iPad.
 - ix. Data Migration/Conversion * – This is the costs to import/migrate your current occupancy data into an acceptable format for the inspection program. ** This is an estimate as we can’t guarantee the pricing until we review your current data.*
 - x. Training – This is the training costs, which will be provided live on-site for five (5) days.
- (h) Subtotal Of Above – This is the total of the Year 1 Equipment Costs.
- (i) Equipment Cost 2nd Year
 - i. FH Maintenance/application/analytic - This is the annual upgrade and maintenance costs of the software provided by FIREHOUSE Software©.
 - ii. AT&T Service @ \$25/month - This is the number of (AT&T or Verizon) service plans provided and the cost-per-unit funded in the proposal.
 - iii. iPad Service Costs - This is annual cost to maintain the warranty and service work not covered by the Apple warranty.
 - iv. iPad Maintenance Costs - This is annual costs to maintain the billing and data system and syncing to each iPad.
- (j) Total Year 2 Equipment Costs - This is the total of the Year 2 Equipment Costs.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation,

Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. Upon award of the winning bid, we shall purchase and maintain insurance coverage for not less than the following:

(a) Commercial General Liability, covering:

- i. Premises/operations
- ii. Products/completed operations (two years minimum, from project completion)
- iii. Broad form property damage
- iv. Contractual liability
- v. Independent contractors, if any are used in the performance of this contract
- vi. City of Durham must be named additional insured.
- vii. Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

(b) Commercial Auto Liability, covering:

- i. Symbol 1, all vehicles
- ii. Combined single limit of \$1,000,000
- iii. City of Durham must be named additional insured

(c) Professional Liability or Errors and Omissions, covering:

- i. Covering claims arising out of professional advisement / consultation services performed in connection with this contract
- ii. Self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
- iii. Combined single limit not less than \$1,000,000 per occurrence;

(d) Workers' Compensation Insurance, covering:

- i. Statutory benefits;
- ii. Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- iii. Employers' liability, \$1,000,000
- iv. Waiver of subrogation in favor of the City of Durham

(e) Fidelity/Crime Insurance

- i. Naming the City as Loss Payee

(f) General Internet Crime Liability/Cyber – Liability

- i. Covering claims associated with e-business and Internet

(g) Insurance shall be provided by:

- i. Companies authorized to do business in the State of North Carolina
- ii. Companies with Best rating of A-, VII or better.

(h) Insurance shall be evidenced by a certificate:

- i. Providing notice to the City of not less than 10 days prior to cancellation or reduction of coverage

(i) Certificates shall be addressed to:

City of Durham, North Carolina
Attention: Assistant Chief of Planning and Administration
Durham Fire Department
2008 E. Club Blvd.
Durham, NC 27704

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract: None.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Chris Iannuzzi
City of Durham
2008 E. Club Blvd.
Durham, NC 27704
The fax number is (919) 560-4256.
Email: Christopher.Iannuzzi@Durhamnc.gov

To the Contractor:

Mike Rivera
The fax number is (916) 943-1661.
Email: mike@firerecoveryusa.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property

proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the

rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

_____ By: _____

Fire Recovery USA, LLC

By: _____ (SEAL)
Chief Executive Officer

State of _____

ACKNOWLEDGMENT BY
LIMITED LIABILITY COMPANY

County of _____

I, a notary public in and for said county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of Fire Recovery USA, a limited liability company organized and existing under the laws of the State of California, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 20____.

My commission expires:

_____ Notary Public